

REMARKS

Claims 1-5, 7, and 11-46 were currently pending in this application. The Examiner has rejected claims 1-5, 7, and 11-46 under 35 U.S.C. § 103(a) as being unpatentable under Showa Denko KK JP 62096408 (hereinafter “Showa Denko”) in view of U.S. Patent No. 4,775,525 (hereinafter “Pera”) and U.S. Patent No. 5,011,682 (hereinafter “Elliott”). With this Response, Applicant has cancelled dependent claim 15 and incorporated its limitation into independent claims 1 and 46. Thus, Applicant has also amended independent claims 1 and 46. Applicant respectfully submits that the amendments made to claims 1 and 46 overcome the Examiner’s § 103(a) objection and therefore, requests withdrawal of the same.

The present invention is directed to an oral care composition comprising an orally acceptable carrier combined with an ascorbyl-2-phosphate compound and a pyrophosphate, tripolyphosphate, or polyphosphate tartar control agent. Moreover, the oral care composition of the present invention, as amended, also requires that the composition have a pH of 5.5-10. No combination of art teaches the present invention.

The combination of Showa Denka, Pera, and Elliott fails to teach the present invention because there is no disclosure anywhere which shows that the pH of the oral composition is 5.5-10. Obviousness requires that each and every element of a claim be present in a combination of references, along with a teaching, motivation and suggestion of success in combining them. *See* MPEP § 2143.01. A modification to a reference is not obvious if it changes that reference’s principle of operation. *Id.* In addition, a modification to a reference that renders the reference unsatisfactory for its intended purpose is not obvious. *Id.* Furthermore, the motivation to

combine reference must be “clearly and particularly” taught in the references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Finally, in determining obviousness, the Examiner “cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.” *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002).

Here the Examiner has relied on three references, none of which disclose the pH of the oral composition to be 5.5-10. Specifically, the Examiner cites Showa Denka to teach ascorbic acid phosphoric acid ester or its salts in an oral composition. Further, the Examiner has relied on Showa Denka to teach abrasives, thickeners, water-soluble fluids and solids, flavors, antimicrobial additives, surfactants, and sweeteners. The Examiner cannot cite Showa Denka for a pH range of the oral composition as pH is not discussed in Showa Denka. The Examiner next cites Pera to teach the use of desensitizing agents. However, the Examiner does not cite Pera for the pH of the oral composition as pH is not discussed in Pera. Finally, the Examiner cites Elliott to teach the use of soluble pyrophosphates salts as tartar control agents. Yet, the Examiner does not cite Elliott to teach the pH of the oral composition as the pH of the oral composition is not disclosed in Elliott. As such, claim 1 and 46, as amended, is not obvious in light of the above references as the pH of the oral composition is not found anywhere in those references and obviousness requires that each and every element of a claim be present in a combination of references. *See MPEP § 2143.01.*

Because claim 1 is patentable, claims 2-5, 7, 11-14, and 16-45 are patentable as dependant from patentable base claims. *See MPEP § 2143.03; In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Applicant respectfully submits that the amendment herein demonstrates Applicant's preference for particular language and, notwithstanding anything to the contrary, are not intended to be amendments related to patentability. Furthermore, Applicant respectfully submits that the amendments herein merely add language of equivalent scope, and that nothing herein is intended to narrow the scope of any of the claims. Finally, none of Applicant's amendments or cancellations are to be construed as dedicating any such subject matter to the public, and Applicant reserves all rights to pursue any such subject matter in this or a related patent application.

With entry of the above amendment and in view of the foregoing remarks, Applicant respectfully submits that all of the objections and rejections in the Office Action dated January 10, 2005 have been overcome and should be withdrawn. Further, Applicant submits that claims 1-5, 7,11-14, and 16-46 are in condition for allowance. Therefore, Applicant respectfully requests early and favorable notification to that effect. The Examiner is encouraged to contact the undersigned with any questions or to otherwise expedite prosecution.

Respectfully submitted,

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Dated: March 10, 2005